

REMARKS

It was alleged in the Action mailed January 28, 2000 that Claims 1-30 were generic to a plurality of patentably distinct species comprising fabric softeners, phase stabilizers and principal solvents. Applicants respectfully dispute this characterization but in accordance with 35 U.S.C. §121 elect di- and tri-esterquat fabric softeners, the genus of phase stabilizers recited at section D1 of Claim 1 and 2,2,4-trimethyl-1,3-pentanediol as the principal solvent with respect to Claims 1-5, 7, 15-18 and 26-30.

The present invention and each of the 30 claims is directed to a clear or translucent fabric softener composition that may be obtained with significantly reduced levels of principal solvent through the use of a high level of an electrolyte and/or phase stabilizer. Further, the use of such an electrolyte and/or phase stabilizer enables the use of solvents that have a broader range of ClogP values to achieve a clear or translucent fabric softener composition. See page 19, lines 4-35. In light of the nature of the present invention and the fact that fabric softeners and their use are well known in the art, it is unclear why a restriction requirement amongst fabric softener compounds is required. Similarly, it is not clear why a restriction requirement is proper with respect to the principal solvents and optional phase stabilizers where the solvents and stabilizers that are described and claimed in the application are specifically disclosed for their use in formulating such clear or translucent fabric softener compositions.

As reflected in Claim 1, the present invention is directed to a clear or translucent fabric softener composition that includes a fabric softener compound, a principal solvent, a relative high level of electrolyte, and optionally, a phase stabilizer. Each of Claims 2 through 30 depend from Claim 1 and it is not clear how they are generic of a patentably distinct species. Applicants respectfully request the withdrawal of the election requirement and that Claims 1-30 be considered together in this application.

Claim Rejections Under 35 U.S.C. §112

Claims 1-5, 7, 15-18 and 26-29 were rejected under 35 U.S.C. §112, first paragraph, based on the allegation that the specification fails to reasonably provide enablement for any and all conceivable solvents meeting the ClogP recitation. Applicants respectfully disagree. The class of materials and compounds that may be used in the present invention have been described in terms of their octanol/water coefficient which are conveniently given in the form of their logarithm to the base 10, as is described on page 20, lines 21-38, and page 21, lines 1 - 8. As is also described therein, the ClogP for a given compound may be easily obtained through

experimentation, database review and/or through computerized modeling. Applicants have determined and described that solvents having a ClogP between about -2.0 and 2.6 may be used to advantage in the compositions of the present invention. It is not clear why a solvent that has a ClogP within this recited range but which is not mentioned by name in the application, would not be enabled for use by one skilled in the art. Therefore, Applicants respectfully request withdrawal of the rejection of Claims 1-5, 7, 15-18 and 26-29 under 35 U.S.C. §112, first paragraph.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1-5, 7, 15-18 and 26-30 were rejected under 35 U.S.C. §112, second paragraph, based on the allegation that they are indefinite for failing to particularly point out and distinctly claim the subject matter regarded as Applicants' invention. The amendments to Claims 1, 28, 29 and 30 are believed to overcome these rejections. Support for the amendments to Claims 1 and 28 is found on page 19, lines 4-35, and for the amendments to Claims 29 and 30 on pages 37-39. Applicants respectfully request the withdrawal of these rejections.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-5, 7, 15-18 and 26-30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wahl et al., US 5,759,900 ("Wahl"). Specifically, it is alleged that Wahl teaches a liquid fabric softening composition that may be clear containing 2-80% fabric softener active, about 40% of a principal solvent and 0-2% of an electrolyte, namely, magnesium and calcium compounds.

Applicants would first point out that the electrolyte is not present in the compositions taught by Wahl at a level from 0-2%. As noted in each of the examples provided in Wahl, the CaCl_2 electrolyte solution was a 25% solution such that the actual level of electrolyte disclosed therein was between 0 and 0.5% by weight of the fabric softening composition. See examples 1-15. In contrast to Wahl, the claims of the present invention recite the presence of electrolyte at a level between about 0.5% and about 10% by weight of the fabric softener composition. It is this high level of electrolyte and/or a phase stabilizer that enables the clear or translucent fabric softener compositions of the present invention to contain lesser amounts of principal solvent as well as to enable the use of a greater variety of materials as the principal solvent.

Further, while it has been alleged that the compositions taught by Wahl contain about 40% principal solvent, the compositions of the present invention contain less than about 40% and

may preferably contain principal solvent in amounts of less than 10%. See page 19, lines 4-35 and claims 2, 28, 29, 30 and claims depending therefrom. In fact, the principal solvent levels of the present invention may be so low that the composition would not be clear or translucent in the absence of electrolyte or a phase stabilizer. Wahl contains no teaching or suggestion from which one skilled in the art would recognize that clear or translucent fabric softener compositions could be formed from using such a lesser amount of principal solvent.

Further still, Wahl teaches that principal solvents having a ClogP ranging from 0.15 to 0.64 are to be used in the clear fabric softening compositions. However, the reference contains no teachings or suggestions that would have led one skilled in the art to believe that principal solvents having a ClogP between -2.0 and 0.15 or between 0.64 and 2.6 could also be used to form a clear or translucent fabric softener composition. Although water soluble calcium and/or magnesium compounds are taught in Wahl as optional ingredients to aid in adjusting viscosity, there is no suggestion in the reference that the use of these electrolytes at any level may be used to reduce the amount of principal solvent that is required to form a clear or translucent fabric softening composition. Likewise, there is no teaching in Wahl that the use of these electrolytes at any level will enable the use of principal solvent compounds that have characteristics unlike those that are described therein.

Applicants maintain that it would not have been obvious to make such a clear or translucent fabric softener composition at the time the invention was made as there is no teaching or suggestion in Wahl to indicate that the use of a high level of electrolyte and/or a phase stabilizer would have imparted these benefits. Therefore, Applicants respectfully request the withdrawal of the rejection of Claims 1-5, 7, 15-18 and 26-30 under 35 U.S.C. §103(a).

Claim 29 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Wahl in view of Wahl et al. US 5,545,340. It was not alleged that the '340 patent teaches the unique features of the present invention relating to the use of a relatively high level of electrolyte and/or a phase stabilizer. Therefore, in view of the dependency of Claim 29 from Claim 1, Claim 29 is likewise believed to be non-obvious and allowable in light of the combined teachings of Wahl and the '340 Patents.

Allowable Subject Matter


Applicants acknowledge and are very appreciative of the Examiner's comments concerning allowable subject matter that may exist in Claim 30. However, Claim 30 is believed

to be further patentable over the cited art because of the unique features of the present invention relating to the use of a high level of electrolyte and/or a phase stabilizer.

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Applicants respectfully request reconsideration of this application in view of the amendments set forth above and the remarks contained herein. The claims are believed to be in condition for allowance and an early notice thereof is respectfully requested.

Respectfully submitted,

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